

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF	:	
	:	
RHODE ISLAND STATE LABOR	:	
RELATIONS BOARD	:	
	:	
-AND-	:	CASE NO: ULP-6074
	:	
STATE OF RHODE ISLAND,	:	
RHODE ISLAND COLLEGE	:	

DECISION AND ORDER

TRAVEL OF CASE

The above entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter "Board"), as an Unfair Labor Practice Complaint (hereinafter "Complaint"), issued by the Board against Rhode Island College (hereinafter "Employer"), based upon an Unfair Labor Practice Charge (hereinafter "Charge") dated January 11, 2012 and filed on January 12, 2012 by Professional Staff Association@ Rhode Island College (hereinafter "Union" or "PSA@RIC").

The Charge alleged violations of R.I.G.L. 28-7-13 (3) and (6) and (10) as follows:

"On or about November 7, 2011, when the Employer, Rhode Island College, hired Ms. Kate Brezina as "Executive Director for Alumni and College Relations," it unilaterally removed work that had been performed by various positions within the PSA@RIC bargaining unit, including the Director of Alumni Affairs and the Assistant Director of Alumni Affairs, and assigned them to Ms. Brezina in the position into which she was hired, which the College posted and filled outside of the PSA@RIC bargaining unit. In doing so, the College violated the Act as specified in Section 5 above."

Following the filing of the Charge, the Union submitted a written statement on February 13, 2012 and the Employer filed its response on March 2, 2012. The Union filed a counterstatement on March 9, 2012. After the informal process had concluded, the Board reviewed the matter and issued a Complaint on April 10, 2012, as follows: "The Employer has violated R.I.G.L. 28-7-13 (6) and (10) when it assigned bargaining unit work to a non-bargaining unit member, without prior bargaining with the exclusive bargaining agent."

The matter was then scheduled for formal hearing on June 19, 2012, but was subsequently rescheduled at the request of the Employer to September 20, 2012. A second hearing day was conducted on November 20, 2012. Representatives from the

Union and the Employer were present at the hearings and had full opportunity to examine and cross-examine witnesses and to submit documentary evidence. Post-hearing briefs were filed on or about March 14, 2013. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony, evidence, oral arguments and written briefs submitted by the parties.

FACTUAL SUMMARY

Since at least 1997 and until 2011, Rhode Island College's Office of Alumni Affairs staffing complement included a position known as "Director of Alumni Affairs." (See Union Exhibit #1) The position was filled by Ms. Ellie O'Neill, for approximately thirteen (13) years, until 2009, when she was laid off.¹ This position was recognized by the Employer as a Union position. Since at least February 2000 and until 2011, the office also had a position known as "Assistant Director of Alumni Affairs." (See Union Exhibit #3) This position was filled by Ms. Shana Murrell. This position was also recognized by the Employer as a Union position. In addition to these positions, Ms. Nancy Hoogasian was employed as an Assistant Director of Development - Annual Giving Programs from 1999 to 2010 and as Assistant Director of Alumni and College Relations from 2010-2011. (See Union Exhibits #6 & #7) This position was similarly a bargaining unit position, until the reorganization in 2010. (Also see Union Exhibit #8, the collective bargaining agreement for the period 2007-2010, Appendix B.)

In February 2010, Mr. James Salmo was hired by Rhode Island College as the Vice President for College Advancement to oversee the College's divisions of Fund Development and Alumni Affairs. (TR 11/20/2012 pgs. 92-93) Mr. Salmo testified that one of his duties, as assigned by President Nancy Carriuolo, was to review the current organizational structure of the College for consistency with other higher education institutions of comparable size. (TR 11/20/2012 pg. 95) This review included an examination of job descriptions and a review of the current personnel filling existing positions. Mr. Salmo testified that when he first arrived on campus, he decided to begin with the Alumni Affairs office because at that time, there was an Interim Director. (TR 11/20/2012 pg. 96)

He determined:

¹ Ms. O'Neill grieved her lay-off and subsequently came to an agreement with the College whereby she would "retire."

(1) That the position of "Director of Alumni Affairs" should be re-titled to "Executive Director of Alumni and College Relations."

(2) That the new Executive Director position would not only work with the Alumni Association, but also with the Deans of the various colleges to strengthen relationships between alumni and the colleges.

(3) That the position should be structured as a non-union position.
(TR 11/20/2012 pg. 98-99)

Mr. Salmo testified that once he was ready to submit these recommendations to the President Carriuolo, he first met with Union representatives to discuss the proposed changes in early June of 2011. Union President Rob Bowers objected when he became aware of the plan to reorganize. (See Union Exhibit #10) Mr. Salmo decided that even though the Union was not in agreement with his proposal, he submitted the same to President Carriuolo for consideration and that she approved the changes. (TR 11/20/2012 pg. 100) At approximately the same time as President Carriuolo approved these structural changes, Ms. Murrell, the Acting Interim Director of Alumni Affairs resigned her position to take a position at another institution. After President Carriuolo approved of the changes, the Office of Higher Education and then the Board of Governors, also had to approve the same. Once these two (2) final approvals were in place, Mr. Salmo posted the position and ultimately in November 2011, Ms. Kate Brezina was hired as the Executive Director of Alumni and College Relations as a non-union employee. (See Job description, Union Exhibit #11)

POSITIONS OF THE PARTIES

The Union's argument is straight-forward. The Employer had a duty to bargain concerning the reorganization and the assignment of bargaining unit duties outside the bargaining unit. The Union also argues that the duties of the new position of "Executive Director of Alumni and College Relations" are substantially the same as the prior positions of Director and Assistant Director of Alumni Affairs and therefore, the new position should be in the bargaining unit.

The Employer argues that the prior positions were not appropriately in the bargaining unit to begin with and therefore, the new position should not be included in a bargaining unit either. The Employer also argues that the reorganization was undertaken for a legitimate business purpose and that therefore, the reorganization cannot form the basis of an unfair labor practice. The Employer cites First National

Maintenance Corp v NLRB, 452 US 666 (1981) in support of this position. The Employer also argues that the College's decision to reorganize was for economic profitability and therefore, falls squarely under the holdings in First National. (Employer's brief pg. 7)

DISCUSSION

As noted by the Employer at page five (5) of its brief, much of the testimony in the formal hearings, as presented by both parties, centered on whether the new position of Executive Director would, by the terms of the Union certification, be considered to be within the scope of the bargaining unit. This type of evidence was essentially irrelevant to the charge of unfair labor practice. Within an unfair labor practice proceeding, the Board has no lawful authority to "clarify" a position. Our focus is strictly limited to the Complaint that we issued. In this case, the Complaint that was issued by the Board was: "The Employer violated R.I.G.L. 28-7-13 (6) and (10) when it assigned bargaining unit work to a non-bargaining unit member, without prior bargaining with the exclusive bargaining agent." The issues of whether the prior bargaining unit positions should have been in the bargaining unit or whether the new position of Executive Director should be in the bargaining unit are not before us. However, within the scope of ascertaining whether a violation occurred as set forth in the Complaint, we are not unmindful of the fact that the Employer never made any attempt to clarify the appropriateness of the existing positions for their inclusion within the bargaining unit, either prior to or during the reorganization.²

The limited questions before the Board then are: (1) Was the work performed by prior employees bargaining unit work? (2) If so, was the bargaining unit work assigned to non-bargaining unit members? (3) If so, was there a requirement that the Employer engage in negotiations prior to transferring the work? (4) If so, was the transfer of bargaining unit work to non-bargaining unit members done without any prior negotiations with the exclusive bargaining agent? Questions 1 and 2 can be combined for analysis purposes. Questions 3 and 4 can similarly be combined.

² This Board provides a lawful process, pursuant to 8.05 of its Rules and Regulations, to remove positions from bargaining units.

DID THE EMPLOYER ASSIGN BARGAINING-UNIT WORK TO A NON BARGAINING UNIT MEMBER?

In presenting its issue of bargaining unit work, the Union presented testimony from: (1) Ms. Ellie O'Neill, the former Director of Alumni Relations; (2) Ms. Shana Murrell, the former Assistant Director of Alumni Relations and the former Interim Director of Alumni Relations; (3) Ms. Kathy Hoogasian, the former Assistant Director of Development and Annual Fund from September 1999 to June 2011 and the former occupant of the newly reorganized title of Assistant Director of Alumni and College Relations.

Ms. O'Neill testified that she compared her own former job description of Director of Alumni Relations (Union Exhibit #1- dated 7/97 on page 3) to the job description for the position of "Executive Director Alumni and College Relations" (Union Exhibit #2). She testified, "The document dated 7/13/11 [Union Exhibit #2] under primary purpose, it's more elaborate than under the primary purpose for the older document [Union Exhibit #1]; however, much of what is stated in the new document is listed under the essential job functions in the older document. So, I'd have to say that anything under the primary purpose of the new document are functions that I did serve." (TR. 9/20/12 pg. 13) Further, when asked to review Union Exhibit #2, pages 2-3 under the description of duties and tasks, Ms. O'Neill stated that the new job description contained duties pertaining to "assisting with comprehensive capital campaign management, as needed." She explained that while her former job description did not list these duties, she did in fact perform those duties for the college's sesquicentennial celebration, while serving in the position of Director of Alumni Affairs. (TR. 9/20/12 pg. 14) Additionally, Ms. O'Neill stated that the last bullet item on the Executive Director position description, which was to "hire, evaluate and supervise professional and support staff" was not contained on her job description of Director of Alumni Affairs, but that she in fact played a role in hiring several positions by serving on search committees. (TR. 9/20/12 pgs. 14-15) In addition, she testified that in her position of Director of Alumni Relations, she performed evaluations for three (3) professional staff employees each spring, even though that function was not listed on her job description. (TR. 9/20/12 pgs. 17-18) Ms. O'Neill testified that all the other duties and responsibilities set forth on the job description for Executive Director were all functions that she

performed in her capacity as Director of Alumni Affairs. (TR. 9/20/12 pgs. 21-22) She testified that approximately eighty-five to ninety percent of her time was spent performing the professional duties of the position and that the remaining time was spent on administrative matters such as paperwork, email and fund-raising events. (TR. 9/20/12 pgs. 22 - 23)

On cross-examination, Ms. O'Neill testified that she served on the hiring committee for three (3) positions within the Office of Alumni Affairs, positions ultimately held by Shana Murrell (Assistant Director of Alumni), Nancy Hoogasian (Assistant Director of Development – Annual Fund) and Kim Fiora (Director of Data Coordinator). (TR. 9/20/12 pg. 24) Ms. O'Neill testified that she approved vacations in accordance with a master calendar; and that she approved requests as long as there was coverage in the office. (TR. 9/20/12 pg. 30)

Shana Murrell testified that she served as the Assistant Director of Alumni Affairs from February of 2000 until she left the college in July 2011. She also served simultaneously as the Interim Director of Alumni from September 2009 to her departure in July 2011. (TR. 9/20/12 pg. 31) During her time of employment, Ms. Murrell was not only a member of the Union, she also served in a leadership role within the Union, first as Divisional Representative and then as Vice President. (TR. 9/20/12 pg. 32) Ms. Murrell testified that Union Exhibit #3 (job description for Assistant Director of Alumni Affairs) accurately described her duties and responsibilities that she performed in that role. (TR. 9/20/12 pg. 34) In that position, Ms. Murrell usually reported to Ms. O'Neill, as the Director, but there were occasions that she would report to Dr. Peg Brown for specific duties and events. After Ms. O'Neill left her position, Ms. Murrell's duties increased because she took on many of Ms. O'Neill's former duties as well. Ms. Murrell testified that she was asked to and did assume the position of Interim Director of Alumni Affairs in September 2009. Ms. Murrell testified that the work in the office was done collaboratively with the staff. Ms. Murrell testified that sometime in spring 2011, she became aware of a plan being proposed by Mr. Salmo to reorganize the Office of Alumni Affairs; and that her original and true position of Assistant Director was no longer included on the existing organizational chart. (TR. 9/20/12 pgs. 40 - 41) Ms. Murrell testified that she pointed out the error to Mr. Salma and he said he would

“look into it.” (TR. 9/20/12 pg. 41) Ms. Murrell learned later on that spring that her position of Assistant Director had been eliminated from the proposed reorganization. *Id.* (See Union Exhibit #4).

Ms. Murrell was asked on direct examination to review the “primary purpose” section of the Executive Director’s job description (Union Exhibit #2) and to compare that with the duties she performed as the Interim Director of Alumni Affairs. Ms. Murrell stated: “It is very similar to the duties that I performed as the Interim Director of Alumni Affairs.” (TR. 9/20/12 pg. 44) When asked if the job description differed in any way, Ms. Murrell replied: “Yes, It’s a little more descriptive than the original director position -- I’m sorry-- a little bit more descriptive than the original Director of Alumni Affairs description, and it specifically notes capital campaigns in the primary purpose where it does not delineate that in the Director of Alumni Affairs older position.” (TR. 9/20/12 pgs. 44-45) Ms. Murrell testified that despite the absence of capital campaign duties in her former job description, that she performed these duties in connection with the college’s sesquicentennial in 2004. *Id.* On further direct-examination, Mr. Murrell described how she compared her former job description with that of the Executive Director. She prepared a document, submitted as Union Exhibit #5, which set forth the Executive Director’s job description as advertised and posted, together with comments as to whether she performed specific functions in her capacity as Assistant Director of Alumni Affairs or her capacity as Interim Director. She testified that the language in black ink on this document is the language that was used for the Executive Director position. Under each line of black text are annotations appearing in red and blue ink, which Ms. Murrell added to the document. The red ink indicated whether Ms. Murrell performed the duty [as described in black ink] when serving in her capacity as Interim Director, Assistant Director, or both. The annotations in blue ink represented a further breakdown of the duties and responsibilities that she performed in each role - Assistant Director and Interim Director.

When asked if there were any duties in the Executive Director position that she did not perform in her positions as either Assistant Director or Interim Director of Alumni Affairs, Ms. Murrell replied that she did not hire nor evaluate *support* staff. She did, however, serve on hiring committees within the college on two (2) occasions - once for

the position of campus photographer and once for an assistant director in dining services. (TR. 9/20/12 pg. 56) Ms. Murrell did participate in the annual review of *professional* staff in the office of Alumni Affairs each spring that she served as Interim Director. (TR. 9/20/12 pg. 59) She described this process as collaborative. Id. Ms. Murrell testified that during her tenure as Interim Director she never acted to reprimand, transfer, suspend, lay-off or terminate any employee, nor was she involved with the formulation of labor relations strategies on behalf of the College. (TR. 9/20/12 pgs. 65-66) All of Ms. Murrell's testimony was unrebutted as the Employer did not conduct any cross-examination.

The Union also presented testimony from Nancy Hoogasian, who testified that she had been employed as the Assistant Director of Development and Annual Fund from September 1999 to June 2011 and then under the reorganized title of Assistant Director of Alumni and College Relations. (TR. 9/20/12 pg. 68) (Union Exhibits #6 & #7) Ms. Hoogasian testified that she assumed some of former Director O'Neill's duties after she retired in 2009, including helping to manage the 50th class reunions; and helped to support Homecoming and took "more of a co-leadership" role with Ms. Murrell. (TR. 9/20/12 pg.73) Ms. Hoogasian's job description was not changed and she did not receive any pay differential for having assumed more responsibilities. Ms. Hoogasian testified that when her position changed in June/July 2011, the following two (2) duties were added to her written job description:

- (1) Assist Executive Director regarding all aspects of the alumni awards ceremony.
- (2) As a key member of the homecoming committee, collaborate with other committee members to develop, plan, market, coordinate, and oversee all general alumni activities that take place during homecoming. (TR. 9/20/12 pgs. 73 - 74)

However, despite these formal additions to the job description, Ms. Hoogasian was already performing these duties. (TR. 9/20/12 pg. 75) Ms. Hoogasian's pay grade did not change with the change in title. Interestingly, despite the addition of Homecoming duties to her job description in the summer of 2011, after Ms. Brezina came on board as the Executive Director in the fall of 2011, Ms. Hoogasian was not asked to participate in Homecoming preparations. Ms. Hoogasian also testified that in both of her positions, she provided key-fundraising support for capital and annual

campaign initiatives (which is a bullet item in the Executive Director's job description.) Ms. Hoogasian also testified that the Executive Director's job description, as it pertained to soliciting, cultivating, and stewarding alumni donors was similar to functions that she performed in both positions that she held at the college. (TR. 9/20/12 pg. 85) All of Ms. Hoogasian's testimony was unrebutted as the Employer did not conduct any cross-examination.

The evidence in this case overwhelmingly establishes that the positions of Director of Alumni Affairs, the Assistant Director of Alumni Affairs, and Assistant Director of Development/Annual Fund were members of the bargaining unit for many, many years. (See Union Exhibits #1, #3, #6 and #8) The long-time incumbents of these positions, Ellie O'Neill, Shana Murrell and Kathy Hoogasian, respectively, all provided extensive testimony in this proceeding concerning their duties and responsibilities while filling these positions. Their testimony, coupled with a review of the various job descriptions, both before and after the reorganization, provide completely unrebutted evidence that the majority of the duties and responsibilities of the position of Executive Director of Alumni and College Relations are the same duties, which were performed by bargaining unit members O'Neill, Murrell, and Hoogasian for many years. The Board was particularly persuaded and impressed by Union Exhibit #5, which broke down the duties set forth on the Executive Director's job description and was annotated with colored inks identifying in what capacity Ms. Murrell had performed those same functions while a member of the bargaining unit. The only possible discrepancy is the last item under duties and responsibilities which is: "Hire, evaluate and supervise professional and support staff." We say "possible" discrepancy because the Employer did not provide testimony as to how Ms. Brezina fulfills those functions; vis-à-vis the manner in which those functions were performed by Ms. O'Neill, Ms. Murrell, or Ms. Hoogasian, all of whom participated in search committees and who performed spring evaluations of professional staff. Therefore, with the exception of this bullet item, all the duties set forth on the job description of Executive Director were indeed functions performed by members of the bargaining unit. The evidence also establishes that the position of Executive Director is not within the bargaining unit. Therefore, the Union has established, beyond a shadow of a doubt that the Employer did indeed remove and

transfer bargaining unit work to an employee outside the bargaining unit and this Board so finds.

DID THE EMPLOYER HAVE AN OBLIGATION TO BARGAIN WITH THE UNION PRIOR TO TRANSFERRING BARGAINING WORK OUT OF THE BARGAINING UNIT AND IF SO, DID THE EMPLOYER BARGAIN WITH THE UNION?

The Employer first argues in its defense against the Complaint that “if work previously done by Union members, which is not appropriately part of the bargaining unit (see June 27, 1973 Certification of Representation), which is supervisory in nature or otherwise not properly within the bargaining unit, then the Union cannot base an unfair labor practice charge upon the failure to continue the inappropriate assignment of work to the bargaining unit.” The bargaining unit in question is the Professional Staff Association at Rhode Island College. Its membership consists of professional staff over a wide range of departments and pay-grades ranging from a low of six (6) (Box Office Manager) to a high of seventeen (17) (Assistant Controller in Accounting and Bursar, Director of Research and Grants Administration). (See Union Exhibit #8) The positions in this case that were part of the bargaining unit, before the unilateral implementation of the reorganization were: Director of Alumni Affairs (pay-grade thirteen (13)), Assistant Director of Alumni Affairs (pay-grade nine (9)) and Assistant Director–Development/Annual Fund (pay-grade nine (9).) (See Union Exhibit #8) Additionally, the issues highlighted by the Employer as ones which would only be performed by a supervisor, i.e.// evaluating other employees, and approving vacation requests are issues that are covered by the collective bargaining agreement between the Employer and the Union, specifically Union Exhibit #8, Article XI and Article XV, Section 15.2. Mr. Rob Bowers, Union President, testified that approximately twenty-five (25) to twenty-eight (28) members of the bargaining unit would similarly be involved in evaluating other employees and approving vacation requests. (TR 11/20/2012. pg. 143) As to the Employer’s allegation that the positions in questions are supervisory or confidential, we are constrained to point out that no such question was ever submitted to this Board and that question is not the subject of this proceeding. We have in our Rules and Regulations, Section 8.05, which permits an Employer who believes that a position is no longer includable within a bargaining unit, to petition the Board for an appropriate investigation and hearing to remove the position from the

bargaining unit. This section has been included in the Board's Rules and Regulations since well prior to the Employer's apparent unilateral determination that the positions were no longer appropriate for collective bargaining.

The Employer has recognized these positions as members of the bargaining unit for many years, as evidenced by the job descriptions themselves, as well as the Collective Bargaining Agreement (See Union Exhibits #1, #3, # 6 and #8). The Employer is not permitted to simply declare by fiat that the work, which was being performed by the bargaining unit members, was no longer appropriately bargaining unit work and forgo securing a ruling from this Board on that question. If the Employer believes this to be the case and wants the position removed, the Employer is *obligated* to process a exclusion petition before this Board. This, the Employer did not do.³ Therefore, we find conclusively that the work is bargaining unit work.

The Employer further defends its actions in unilaterally transferring bargaining unit work as justified as a "legitimate business reason" and cites First National Maintenance Corp v NLRB, 452 U.S. 666 (1981) in support of this position. The Employer argues that the decision to reorganize the areas that fall under the ambit of the Vice President fall squarely into the third category [of management decisions] as set forth in First National. The Employer argues: "the decision to reorganize was based upon the College's desire to bring the alumni and advancement functions at the College into conformity with the prevailing practices at similar institutions, to bring outdated functions and organization up to date and entirely for purposes which fit within the Supreme Court's conceptual category of decisions made strictly for economic profitability." (Employer's brief pg. 7) The Employer also notes that the First National Court contrasted the decision therein, from the issue that arose in Fibreboard Paper Products Corp v. NLRB, 379 US 203 (1964).

In First National, the Employer was the provider of housekeeping services to commercial customers in New York. One of First National's customers was Greenpark Nursing Home and their contract was such that First National was not only, not making money, but it was losing money. During the pendency of the contract for services between First National and Greenpark, an employee Union at Greenpark was certified

³ Additionally, none of the evidence that was adduced in the hearing before us led us to believe that any of the pre-exiting duties of the Office of Alumni Affairs discussed at hearing would be either confidential or supervisory, if the matter were in fact a subject for resolution in this hearing.

by the NLRB. The Union wrote to First National requesting bargaining, but the Employer refused to engage in bargaining since it had unilaterally decided to cancel its contract for services with Greenpark. The Union filed a charge of unfair labor practice with the NLRB. The Administrative Law Judge recommended an order requiring the Employer to bargain with the Union over the decision to terminate the Greenpark Service Agreement, as well as the effects of that decision. He also recommended that the Employer be required to pay back-pay or offer the employees positions at other locations. The NLRB adopted the ALJ's recommendations. On appeal, the Court of Appeals enforced the Board's order, but for a different rationale, reasoning that no *per se* rule could be formulated to govern an Employer's decision to close part of its business. The Court of Appeals found that Section 8(d) of the National Labor Relations Act creates a presumption in favor of mandatory bargaining over such a decision and that the presumption is rebuttable by showing that the purposes of the statute would not be furthered by imposing a duty to bargain; for example, by showing that bargaining over the decision would be futile, or that the decision was due to emergency financial circumstances, or that the custom of the industry was to not bargain over such circumstances. This decision was at odds with other Circuits and so therefor, the United States Supreme Court granted certiorari. In reversing the Court of Appeals decision and the Board's decision, the Supreme Court held: "We conclude that the harm likely to be done to an Employer's need to operate freely in deciding whether to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the Union's participation in making the decision, and we hold that the decision itself is not part of 8(d)'s "terms and conditions," see n. 12, *supra*, over which Congress has mandated bargaining. The Court further stated however, "In order to illustrate the limits of our holding, we turn again to the specific facts of this case. First, we note that, when petitioner decided to terminate its Greenpark contract, it had no intention to replace the discharged employees or to move that operation elsewhere. Petitioner's sole purpose was to reduce its economic loss, and the Union made no claim of anti-Union animus." 462 US 666, 687.

In the present case, the Employer argues that its decision to reorganize fits within the type of financial decision as identified in First National. The Employer claims that the

decision to organize was to bring it into conformance with prevailing practices at other institutions. The Employer also argues that there was no evidence of union animus. (Employer brief pg. 7)

The Employer's argument that this is the type of financial decision that brings it within the ambit of First National is unpersuasive to us. First, the issue in First National was the entire closure of an employment location, due not only to unprofitability, but actual fiscal losses. There was no such claim that the manner, in which the Office of Alumni Relations was organized, was unprofitable or causing the College financial woes. In fact, Union Exhibit #9, an email from President Nancy Carriuolo, dated June 5, 2009, stated specifically: "Also, remember that the reorganization is Not prompted by imminent financial exigency. This is not the case. We are planning for the future to become more fiscally secure and less dependent on the legislature."

Second, the reorganization did not result in an elimination of the office itself or a reduction in the Alumni-related duties being performed in the office. The sum total of the change was a tweaking of the wording of job descriptions, the elimination of one full-time equivalent (FTE), and the removal of all positions and duties from the bargaining unit.

Third, under examination, Mr. Salmo testified that he looked around at other institutions to see how things were done in other places. This was not even an attempt to analyze whether the positions had evolved into supervisory or managerial or confidential positions, but rather was simply a simplistic comparison of titles at other colleges and universities. Despite the fact that similar titles at similar sized schools had this comparably titled position within the bargaining unit, Mr. Salmo simply "assumed" that because a similarly titled position at URI was removed from the bargaining unit a number of years ago, that this must then be appropriate for Rhode Island College as well. He "assumed" that this occurred because that position was either supervisory or confidential and had to be moved out. He "assumed", therefore, that making the reorganized position non-union "was the proper way to reflect it." (TR 11/20/2012, pg. 99)

Fourth, we find that the removal of long-time bargaining unit work from the bargaining unit and a subsequent transfer of the same work to other employees who are

not members of the bargaining unit are akin to sub-contracting.” As such, this is a mandatory subject for bargaining. Fibreboard Paper Products Corp v. NLRB, 379 US 203 (1964).

Fifth, we believe that a fair reading of the transcript does in fact give rise to an element of Union animus. Mr. Bowers testified that when he met with President Carriuolo, he told her that this was the third time that a Vice President of the Union had either been laid off or moved out of the Union in the past ten (10) years. (TR. 11/20/2012 pg. 157) Additionally, he testified that at a subsequent meeting, he was told that the position had actually been eliminated from funding the year before and that no one notified the Union or the incumbent of this change. (TR. 11/20/2012 pg. 162)

Finally, but most importantly, at the time that the College undertook the reorganization, there was a Collective Bargaining Agreement in place that recognized the positions as being within the bargaining unit. (See Union Exhibit #8) Although the contract was dated July 1, 2007 to June 30, 2010, Mr. Bowers testified that in 2012 the body of the contract was still current and that only the appendices pertaining to pay grades had changed. He further testified that the position of Director of Alumni Affairs, the precursor to the Executive Director’s position was set forth on Appendix B on page 43 of the CBA. Since the issue of the scope of the bargaining unit was an issue that was settled, by contract, making changes to the same is a mandatory subject for bargaining. It is well-settled, both at federal law and under Rhode Island law that unilateral changes to the scope of the contract by an Employer are an unfair labor practice, per se.

The Employer in this case has admitted that it did not negotiate with the Union, over either the decision to remove bargaining unit work from the Union or the effects of such decision on bargaining unit employees. Mr. Salmo acknowledged that while he met with a Union representative to review his intended course of action and his recommendation to the College’s president, he did not engage in any negotiations over this issue. The Union repeatedly tried to get the College to back away from its intended course of action to no avail. Thus, having found that the Employer had an obligation to bargain with the Union prior to moving bargaining unit work out of the bargaining unit

and having found that the Employer failed to fulfill this obligation, the Union has established that the charge of unfair labor practice must be sustained by the Board.

As a remedy, the Union requested that the work be returned to the bargaining unit and that the Union be made whole for dues, which it should have received from members performing the work. In the alternative, the Union requests that the Board assign the Executive Director position to the bargaining unit. The Board has already noted that the within matter is not a unit clarification proceeding - to either exclude positions or accrete positions to the bargaining unit. Thus, we have no authority to grant any relief, which purports to accrete the position of Executive Director to the bargaining unit.

Additionally, it must be noted that the Employer has the ability to lay off personnel, as noted by the contract and the process contained therein. The evidence (Union Exhibit #3) also established that the position of Assistant Director of Alumni Affairs was "funded for 12 months with renewal based on annual review and availability of funding." Ms. Murrell occupied that position for many years and both she and her Union Representatives were apparently unaware of the requirement that the position be funded each year. The record does not establish *why* the position was not funded, but Mr. Salmo testified that he learned in about March of 2011 that the funding for that position was not included for the upcoming budget. The Employer argues, in its brief, that the new Executive Director has two and one-half people that report to her. (We take that to mean 2.5 *positions*.) The record is not clear as to whether those 2.5 positions are all performing work that was previously performed by the re-configured positions or whether some of them are clerical support staff.

So, in order to effectively provide redress for the Employer's unfair labor practice, the Employer is hereby ordered to Cease and Desist from permitting any non-union employees from performing work that was previously performed by the Director of Alumni Relations and the Assistant Director of Development and Annual Fund, as those positions are described by Union Exhibits #1 and #3 and as outlined on Union Exhibit #5. As for the issue of dues, the Employer is hereby ordered to pay to the Union, back dues at the normal rate since the filing of this petition, for each and every non-Union position that is performing duties that previously appeared on Union Exhibit

#1 and #3. In addition, to the extent that any of the duties that were previously performed by the former Assistant Director of Alumni Relations position are still being performed by any employee not in the bargaining unit, the Union is entitled to dues for that position, if it is an additional separate position than as ordered in the previous sentence. Furthermore, the Employer is directed to post a copy of this decision and order for a period of sixty (60) days on all bulletin boards to which notices for employees are posted.

FINDINGS OF FACT

- 1) Rhode Island College is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
- 2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection; and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
- 3) Since at least 1997 and until 2011, Rhode Island College's Office of Alumni Affairs staffing included a position known as "Director of Alumni Affairs." (See Union Exhibit #1) The position was filled by a bargaining unit member.
- 4) Since at least February 2000 and until 2011, the Office of Alumni Affairs also had a position known as "Assistant Director of Alumni Affairs." (See Union Exhibit #3) This position was filled by a bargaining unit member.
- 5) Since 1999 to 2010, the Office of Alumni Affairs also had a position known as "Assistant Director of Development - Annual Giving Programs." This position was filled by a bargaining unit member.
- 6) In February 2010, Mr. James Salmo was hired by Rhode Island College as the Vice President for College Advancement to oversee the College's divisions of Fund Development and Alumni Affairs.
- 7) In spring 2011, Mr. Salmo notified the Union of his plan to reorganize the Office of Alumni Affairs into an office known as Alumni and College Relations; and that he intended to recommend to the President that the College replace the bargaining unit position of Director of Alumni Affairs with an Executive Director of Alumni and College Relations.

- 8) In June of 2011, after being formally notified of Mr. Salmo's intentions, the Union objected both verbally and in writing.
- 9) The Employer failed and refused to bargain with the Union over the transfer of work from bargaining unit employees to non-bargaining unit employees.
- 10) In summer 2011, the President of Rhode Island College approved of the suggested reorganization and removal of positions from the bargaining unit; and the newly created position of Executive Director was subsequently approved by the Board of Governors.
- 11) In November 2011, a new employee was hired to fill the newly created non-union position of Executive Director of Alumni and College Relations.
- 12) The job description for the new non-Union position of Executive Director of Alumni and College Relations encompasses duties that were previously performed by the Union positions of Director of Alumni Relations and Assistant Director of Alumni Relations.

CONCLUSIONS OF LAW

- 1) The Union has proven by a fair preponderance of the credible evidence that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) and (10).

ORDER

- 1) The Employer is hereby ordered to Cease and Desist from permitting any non-Union employees from performing work that was previously performed by the Director Alumni Relations and the Assistant Director of Development and Annual Fund, as those positions are described by Union Exhibits #1 and #3 and as outlined on Union Exhibit #5.
- 2) The Employer is hereby ordered to pay to the Union, a sum of money, which is equal to the amount of dues at the normal rate that would have been paid by the Union Members, since the filing of this petition, for each and every non-union position that is performing duties that previously appeared on Union Exhibits #1 and #3. In addition, to the extent that any of the duties that were previously performed by the former Assistant Director of Alumni Relations position are still being performed by any employee not in the bargaining unit, the Union is entitled to a sum of money, which is equal to the amount of dues at the normal rate that would have been paid by a Union

Members for that position, if it is an additional separate position than as ordered in the previous sentence.

3) The Employer is hereby ordered to post a copy of this Decision and Order for period of sixty (60) days on all common area bulletin boards for which notices for employees are posted.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

RHODE ISLAND STATE LABOR
RELATIONS BOARD

-AND-

STATE OF RHODE ISLAND –
RHODE ISLAND COLLEGE

CASE NO: ULP-6074

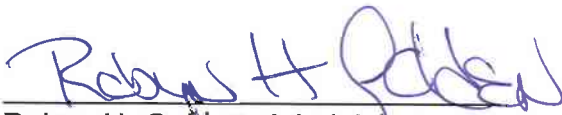
**NOTICE OF RIGHT TO APPEAL AGENCY DECISION
PURSUANT TO R.I.G.L. 42-35-12**

Please take note that parties aggrieved by the within decision of the RI State Labor Relations Board, in the matter of Case No. ULP-6074, dated May 7, 2014, may appeal the same to the Rhode Island Superior Court by filing a complaint within thirty (30) days after **May 7, 2014**.

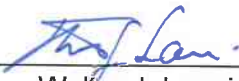
Reference is hereby made to the appellate procedures set forth in R.I.G.L. 28-7-29.

Dated: May 7, 2014

By:


Robyn H. Golden, Administrator

RHODE ISLAND STATE LABOR RELATIONS BOARD



Walter J. Lanni, Chairman



Frank Montanaro, Member



Gerald S. Goldstein, Member

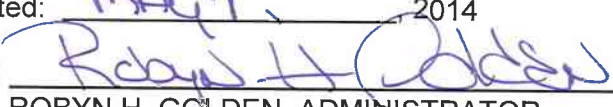
NOTE: On September 20, 2012 and November 20, 2012, Formal Hearings were held for the aforementioned matter. Board Members, Ellen L. Jordan and John R. Capobianco participated in the Formal Hearing processes; only Ellen L. Jordan participated in the preliminary vote on the matter, taken on April 9, 2013 to uphold the violations noted. However, as a result of Board Member, Ellen L. Jordan, no longer representing this Board, as well as the passing of Board Member John R. Capobianco, their names will not appear above as voting Members and signing the Decision and Order as written.

NOTE: Current Board Members Marcia B. Reback, Scott G. Duhamel and Bruce A. Wolpert did not participate in any aspect of this matter; thus, they are refraining from participation in the voting and signing of this Decision and Order as written.

NOTE: Board Member Elizabeth S. Dolan was absent for the voting to sign the Decision and Order as written.

ENTERED AS AN ORDER OF THE
RHODE ISLAND STATE LABOR RELATIONS BOARD

Dated: MAY 7, 2014

By: 
ROBYN H. GOLDEN, ADMINISTRATOR

ULP- 6074